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2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JOHN GARRETT SMITH,

7 Petitioner,

8 v.

9 RONALD HAYES,

10 Respondent.

CASE NO. C18-5061 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

11 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. 46), and
12 Petitioner John Garrett Smith’s (“Smith”) objections to the R&R (Dkt. 47).
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14 On May 10, 2018, Judge Fricke issued the R&R recommending that the Court
15 deny Smith’s motion to proceed *in forma pauperis* and dismiss Smith’s petition as an
16 improper second or successive petition. Dkt. 46. On May 16, 2018, Smith filed
17 objections admitting that he has filed multiple similar pleadings but only because every
18 court, state and federal, has refused to overturn his conviction and order his immediate
19 release from prison. Dkt. 47 at 2–3. On May 17, 2018, the undersigned issued an order
20 declining to recuse based on Smith’s filing of a state court action against numerous
21 defendants, including the undersigned. Dkt. 48. On May 29, 2018, Chief Judge Martinez
22 affirmed the undersigned’s order. Dkt. 51.

1 The district judge must determine de novo any part of the magistrate judge's
2 disposition that has been properly objected to. The district judge may accept, reject, or
3 modify the recommended disposition; receive further evidence; or return the matter to the
4 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

5 In this case, Smith objections are without merit and actually confirm Judge
6 Fricke's recommendation. If Smith contends that a court's decision is in error, then the
7 proper procedure is to appeal the decision to higher courts. It is not appropriate to file
8 multiple petitions in numerous courts seeking identical relief. The Court agrees with
9 Judge Fricke that Smith's petition is an improper second or successive petition.
10 Therefore, the Court having considered the R&R, Smith's objections, and the remaining
11 record, does hereby find and order as follows:

- 12 (1) The R&R is **ADOPTED**;
- 13 (2) Smith's motion to proceed *in forma pauperis* (Dkt. 1) is **DENIED**;
- 14 (3) Smith's petition is **DISMISSED** as second or successive; and
- 15 (4) The Clerk shall enter **JUDGMENT** in favor of Respondent, remove all of
16 Smith's pending motions from the Court's calendar, and close this case.

17 Dated this 31st day of May, 2018.

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20 BENJAMIN H. SETTLE
21 United States District Judge
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